

**JUDICIAL COUNCIL OF CALIFORNIA  
ADMINISTRATIVE OFFICE OF THE COURTS**  
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**Report**

TO: Members of the Judicial Council

FROM: Policy Coordination and Liaison Committee  
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Judicial Service Advisory Committee  
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SUBJECT: Judges' Retirement System II: Annuity Option for Early Retirement  
(Gov. Code § 75521) (Action Required)

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Issue Statement

Under current law, a significant portion of the value of a Judges' Retirement System II (JRS II) member's defined contribution can be lost when the judge retires early and seeks to convert the lump-sum payout to a lifetime annuity in the open market. This legislative proposal would authorize the California Public Employees' Retirement System (CalPERS) to offer the option of an actuarially equivalent lifetime annuity in order to ensure that a vested JRS II member who retires early and wishes to convert the lump-sum payout to an annuity receives the maximum value of his or her defined contribution.

Recommendation

The Policy Coordination and Liaison Committee and the Judicial Service Advisory Committee recommend that the Judicial Council sponsor legislation to amend section 75521 of the Government Code so that the California Public Employees' Retirement System would be authorized to offer any vested Judges' Retirement System II judge who retires early the option of an annuity paid for life that is actuarially equivalent to the lump-sum payout that he or she would otherwise receive, in order to preserve the maximum value of the judge's defined contribution to the JRS II.

The text of the proposed legislation is attached at page 3.

Rationale for Recommendation

Under current law, a judge who is eligible for normal retirement under the Judges' Retirement System II (JRS II) may choose to receive either a defined benefit (a lifetime monthly amount determined by formula) or a defined contribution (a lump sum of the

amount credited to the judge's retirement account, which includes the judge's 8 percent contribution and the state's 10 percent contribution, plus investment earnings). If the judge elects to receive the defined contribution under normal retirement, current law allows the judge to further choose either a lump-sum payout or "an annuity of actuarially equivalent value" for life. (See Gov. Code, § 75522(e).)

By comparison, a JRS II judge who leaves judicial service before becoming eligible for normal retirement is entitled only to the defined contribution and not to a defined benefit. (This difference provides an incentive to judges to remain on the bench.) The California Public Employees' Retirement System (CalPERS) does not have express statutory authority to convert the defined contribution to an "actuarially equivalent annuity." Therefore, a vested judge who retires early and wishes to convert the lump-sum payout to an annuity must do so in the open market with a state-regulated life insurance company. State law imposes numerous restrictions on annuity issuers, including a requirement that they invest the largest proportion of the annuity assets in low-yield bonds and similar fixed-income investments rather than higher yield, albeit riskier, equity investments. (See Ins. Code, §§ 1170–1212.)

In contrast, CalPERS is not subject to the same statutory restrictions that are imposed on private insurers, and is able to invest the larger portion of its portfolios in equities. (See Gov. Code, § 20190.) As a result, CalPERS may realize a substantially higher investment return. Nor does CalPERS bear the same business costs, such as sales commission, state premium tax, and allowance for profit, as the commercial annuity issuers. Therefore, because the assumptions used by CalPERS for calculating the lifetime value of the lump sum can produce a result that is significantly higher than what is available in the open market, and the cost to CalPERS of administering the annuity is lower, the resulting "actuarially equivalent annuity" amount would be higher.

Authorizing CalPERS to offer an annuity in exchange for the defined-contribution lump sum accumulated by a judge who retires early would not expand retirement benefits. It would simply protect the value of the judge's already-accrued benefit.

#### Alternative Actions Considered

N/A

#### Comments From Interested Parties

The California Judges Association has asked to join the Judicial Council as a co-sponsor of this proposal.

#### Implementation Requirements and Costs

The proposal will not require implementation measures by the court system, nor will it impose any fiscal impact on the judicial branch. CalPERS' implementation requirements and cost estimate are pending.

Attachment

Government Code section 75521 would be amended as follows:

1   **§ 75521.**

- 2   (a) A judge who leaves judicial office before accruing at least five years of service  
3       shall be paid the amount of his or her contributions to the system, and no other  
4       amount.
- 5   (b) A judge who leaves judicial office after accruing five or more years of service and  
6       who is not eligible to elect to retire under Section 75522 shall be paid the amount  
7       of his or her monetary credits determined pursuant to Section 75520, including the  
8       credits added under subdivision (b) of that section computed to the last day of the  
9       month preceding the date of distribution, and no other amount. Under rules  
10      adopted by the board, the judge may elect to receive that amount in a single  
11      payment, or may direct that it be paid in an annuity of actuarially equivalent value  
12      for the judge's life or in one of the optional forms provided for in Section 75571.
- 13   (c) Judges who leave office as described in subdivision (b) are “retired judges” for  
14       purposes of a concurrent retirement with respect to the benefits provided under  
15       Section 20639 and assignment pursuant to Article 2 (commencing with Section  
16       66540) of Chapter 2 and are eligible for benefits provided under Section 22814.
- 17   (d) After a judge has withdrawn his or her accumulated contributions or the amount of  
18       his or her monetary credits upon leaving judicial office, the service shall not count  
19       in the event he or she later becomes a judge again, until he or she pays into the  
20       Judges’ Retirement System II Fund the amount withdrawn, plus interest thereon at  
21       the rate of interest then being required to be paid by members of the Public  
22       Employees’ Retirement System under Section 20750 from the date of withdrawal  
23       to the date of payment.